IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA, MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY, Plaintiffs, v. GEORGIA GULF CHEMICALS AND VINYLS, LLC, Defendant.	Civil Action No. 1:07-CV-3113

COMPLAINT

Plaintiff, the United States of America, by the authority of the Attorney General of the United States and through its undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), and the Mississippi Commission on Environmental Quality ("MCEQ"), on behalf of the State of Mississippi and the Mississippi Department of Environmental Quality ("MDEQ"), through its undersigned attorneys, file this complaint and allege as follows:

NATURE OF ACTION

1. This is an action under the Clean Air Act ("CAA"), 42 U.S.C. § 7401 *et seq.*; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 *et seq.*; the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11001 *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. § 9601 *et seq.*; and the Clean Water Act ("CWA"), 33 U.S.C. § 1251 *et seq.*, as amended by the Oil Pollution Act of 1990, and analogous State counterparts including the Mississippi Air and Water Pollution Control Law, Miss. Code Ann. § 49-17-1 *et seq.*, and the Solid Wastes Disposal Law of 1974, Miss. Code Ann. § 17-17-1 *et seq.* (Rev. 2003); to obtain civil penalties and/or injunctive relief for violations of these statutes, as well as their implementing regulations.

JURISDICTION, VENUE AND AUTHORITY

2. Jurisdiction is vested in this Court pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928; Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 325(b)(3) and (c)(4) of EPCRA, 42 U.S.C. § 11045(b)(3) and (c)(4); Section 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d); Sections 103 and 113 of CERCLA, 42 U.S.C. §§ 9603(a) and 9613(b); and 28 U.S.C. §§ 1331, 1345, and 1355. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over the

State law claims asserted by MCEQ pursuant to the Mississippi Air and Water Pollution Control Law, Miss. Code Ann. § 49-17-1 *et. seq.* and the Solid Wastes Disposal Law of 1974, § 17-17-1 *et seq.* (Rev. 2003).

3. Authority to bring this action is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516, 519; Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); Section 305 of the CAA, 42 U.S.C. § 7605; Section 309 of the CWA, 33 U.S.C. § 1319; Section 113 of CERCLA, 42 U.S.C. § 9613; and Section 325(b)(3) and (c)(4) of EPCRA, 42 U.S.C. § 11045(b)(3) and (c)(4).

NOTICE

4. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2); and Section 309(b) of the CWA, 33 U.S.C. § 1319(b), notice of the commencement of this action has been given to MCEQ.

DEFENDANT

5. Defendant Georgia Gulf Chemicals and Vinyls, LLC ("Georgia Gulf" or "Defendant") is a corporation incorporated in the state of Delaware that has its corporate headquarters in the State of Georgia.

6. Georgia Gulf is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and Miss. Code Ann. § 17-17-3(u) (Rev. 2006);

Section 329(7) of EPCRA, 42 U.S.C. § 11049(7); Section 502(5) of the CWA, 33 U.S.C. § 1362(5); Section 302(e) of the CAA, 42 U.S.C. § 7602(e); and Section 103 of CERCLA, 42 U.S.C. § 9603.

FACTS

7. This action pertains to Georgia Gulf's polyvinyl chloride manufacturing facility located in Aberdeen, Mississippi (the "Aberdeen Facility" or "the Facility").

8. The Aberdeen Facility manufactures polyvinyl chloride ("PVC"), a plastic material used in many applications from flexible sheeting to rigid water pipes. Suspension polyvinyl chloride is manufactured from vinyl chloride using a batch reactor polymerization process.

9. Polymerization takes place in reactors, a process in which the molecules of vinyl are linked together to form long chains. These polymer chains form the plastic PVC resin, which Georgia Gulf sells as its product. After the reaction is complete, the PVC resin is dried and then packaged for sale.

10. Vinyl chloride monomer ("VCM") is shipped to the Aberdeen Facility via rail car to use in the manufacture of PVC. The VCM is unloaded from the rail cars and placed in holding areas.

11. Pond 1, a concrete basin, receives water from the PVC reactors, strippers, dryers, cooling towers and the thermal oxidizer operations by gravity through a junction box to Pond 1. After the removal of solids in Pond 1, the wastewater flows in a sewer pipe via gravity flow to Pond 3.

12. Pond 3 is an earthen, clay-lined pond. Wastewater enters Pond 3 through a junction box located on the eastern edge of Pond 3. Pipes from Pond 1, the API Separator, the water treatment plant, and other storm water collection points flow into the junction box, where they mix together and then flow into Pond 3.

13. EPA and MCEQ conducted a multimedia inspection of the Aberdeen Facility in August 2004.

14. As a result of the Inspection, EPA and MCEQ identified violations of RCRA, the CAA, EPCRA, CERCLA and the CWA.

DEFINITIONS

15. Unless otherwise expressly provided herein, terms used in this Complaint that are defined in RCRA, the CAA, EPCRA, CERCLA and the CWA or in the regulations promulgated pursuant thereto will have the meaning assigned to them in those statutes and their implementing regulations.

STATUTORY BACKGROUND – HAZARDOUS WASTE (RCRA)

16. Federal regulation of hazardous waste is primarily based on RCRA, enacted on October 21, 1976 to amend the Solid Waste Disposal Act, and on the Hazardous and Solid Waste Amendments ("HSWA"), enacted by Congress in 1984 to further amend the Solid Waste Disposal Act. RCRA establishes a comprehensive program to be administered by the Administrator of EPA for regulating the generation, transportation, treatment, storage, and disposal of hazardous waste. 42 U.S.C. § 6901 *et seq*.

17. Pursuant to its authority under RCRA, EPA has promulgated regulations at 40 C.F.R. Part 260 through 272 applicable to generators, transporters, and treatment, storage and disposal facilities. These regulations generally prohibit treatment, storage and disposal of hazardous waste without a permit or equivalent "interim status." They prohibit land disposal of certain hazardous wastes, and provide detailed requirements to govern the activities of those who generate hazardous waste and those who are lawfully permitted to store, treat and dispose of hazardous waste.

18. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271, EPA may authorize a state to administer a state hazardous waste program in

lieu of the federal program when it deems the state program to be equivalent to the federal program.

19. EPA has granted final authorization to the State of Mississippi to administer its hazardous waste program in lieu of the federal program. On February 23, 2005, the State of Mississippi received final authorization for its base RCRA program, and there have been subsequent authorized revisions to Mississippi's program. 70 Fed. Reg. 8731 (February 23, 2005). With the addition of Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), new requirements imposed pursuant to the authority of HSWA are immediately applicable in the authorized States upon the federal effective date. MDEQ is the State agency designated to maintain the authorized RCRA program in Mississippi.

20. Pursuant to Sections 3008(a) and (g) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and (g) and 6926(g), the United States may enforce the federally-approved Mississippi hazardous waste program, as well as the federal regulations that remain effective in Mississippi by filing a civil action in United States District Court seeking civil penalties not to exceed $32,500 per day per violation, and injunctive relief.

GENERAL ALLEGATIONS – RCRA

21. Georgia Gulf is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and Miss. Code Ann. § 17-17-3(u) (Rev. 2006).

22. At all times relevant to this action, Georgia Gulf was and continues to be an "owner" and/or "operator" of the Aberdeen Facility, within the meaning of 40 C.F.R. § 260.10 and the equivalent Mississippi hazardous waste regulations. Hazardous Waste Management Regulations, HW-1, Part 260. Georgia Gulf generates hazardous waste within the meaning of RCRA and the relevant Mississippi hazardous waste regulations. 40 C.F.R. § 261.3 and HW-1, Part 261.

COUNT I – RCRA VIOLATIONS

Failure to Make Hazardous Waste Determinations

23. Paragraphs 1 through 22 are incorporated herein by reference.

24. Georgia Gulf is a generator within the meaning of 40 C.F.R. § 260.10 and HW-1, Part 260 of hazardous waste within the meaning of 40 C.F.R. § 261.10 and HW-1, Part 261 and subject to the standards at 40 C.F.R. § 262.10(a) and HW-1, Part 262.

25. A generator within the meaning of 40 C.F.R. § 260.10 and HW-1, Part 260 of solid waste within the meaning of 40 C.F.R. § 260.10 and HW-1, Part 260 must

determine if that waste is a hazardous waste in accord with 40 C.F.R. § 262.11 and HW-1, Part 262.

26. A generator within the meaning of 40 C.F.R. § 260.10 and HW-1, Part 260 of hazardous waste within the meaning of 40 C.F.R. § 261.3 and HW-1, Part 261 must keep records of any test results, waste analyses or other determinations made in accordance with 40 C.F.R. § 262.11 and HW-1, Part 262 for at least three years from the date that the waste was last sent for on-site or off-site treatment, storage or disposal. 40 C.F.R. § 262.40(c) and HW-1, Part 262.

27. On one or more occasions in the five (5)-year period immediately preceding the filing of this Complaint, Defendant violated HW-1, Part 262 and 40 C.F.R. § 262.40(c) by failing to make a hazardous waste determination pursuant to 40 C.F.R. § 262.11 and HW-1, Part 262 and/or failure to retain required test results, waste analyses or other determinations made in accordance with 40 C.F.R. § 262.11 and HW-1, Part 262 for certain waste streams at the Aberdeen Facility, and failure to manage the hazardous waste in accordance with 40 C.F.R. § 262.34 as incorporated by reference in HW-1, Part 262, which is Federally enforceable pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

Failure to Maintain Facility to Minimize Release of U190 Into the Environment

28. 40 C.F.R. § 264.31, as incorporated by reference in HW-1, Part 264, requires that a facility be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous constituents to the air, soil, or surface water which could threaten human health or the environment.

29. During the Inspection, EPA inspectors observed powder-like material strewn across the roof of the Plasticizer Building, where it had the potential of causing a release to the storm drain. Georgia Gulf personnel informed the inspectors that the material was phthalic anhydride.

30. Phthalic anhydride is a listed hazardous waste (U190). 40 C.F.R. § 261.33(f).

31. By failing promptly to clean up the phthalic anhydride on the roof, there was the potential that the waste could wash into the roof drain during a rain event. The roof drains into the process sewer in this area, which empties into the API Separator.

32. Georgia Gulf has therefore violated 40 C.F.R. § 264.31 and HW-1, Part 264 by allowing phthalic anhydride to accumulate on the roof of the Plasticizer

Building, and failing promptly to clean up the phthalic anhydride, which is Federally enforceable pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

Storage of U190 Listed Hazardous Waste Without a Permit

33. Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), 40 C.F.R. §§ 270.1(c) and 270.71(a) and MHWMR §§ 270.1(c) and 270.71(a) prohibit a facility from treating, storing or disposing of hazardous waste without first obtaining a permit or interim status.

34. By allowing the phthalic anhydride (U190), a listed hazardous waste, to accumulate on the roof, Georgia Gulf was therefore illegally storing hazardous waste in violation of RCRA Section 3005(a) and (e), 42 U.S.C. § 6925(a) and (e), and 40 C.F.R. § 262.34.

Treatment, Storage and/or Disposal of Hazardous Waste Without a Permit/Pond 1 and/or Pond 3

35. RCRA Sections 3005(a) and (e), 42 U.S.C. §§ 6925(a) and (e), 40 C.F.R. §§ 270.1(c) and 270.71(a), prohibit a facility from treating, storing or disposing of hazardous waste without first obtaining a permit or interim status.

36. Pond 1, consisting of a concrete basin, receives water from, *inter alia*, the PVC reactors, strippers, dryers, cooling towers and the thermal oxidizer operations

by gravity through a junction box to Pond 1. After the removal of solids in Pond 1, the wastewater flows in a sewer pipe via gravity flow to Pond 3.

37. Pond 3 is an earthen, clay-lined retention pond. Wastewater enters Pond 3 through a junction box located on the eastern edge of Pond 3. Pipes from Pond 1, the API Separator, and other storm water collection points flow into the junction box, where they mix together and then are pumped into Pond 3.

38. Georgia Gulf does not have a RCRA Permit to treat, store or dispose of hazardous waste at the Aberdeen Facility.

39. On information and belief, a sample taken by Georgia Gulf entering Pond 3 exhibited a characteristic for toxicity for vinyl chloride at 0.207 milligrams per liter ("mg/L"), which is above the regulatory limit of 0.20 mg/L. The sample taken by EPA exhibited a characteristic for toxicity at 0.16 mg/L for vinyl chloride, which is below the regulatory limit.

40. During the Inspection, EPA took samples in Pond 1. One water sample exhibited a characteristic for vinyl chloride at 4.8 mg/L. The regulatory limit for vinyl chloride is 0.2 mg/L. On information and belief, the sample taken by Georgia Gulf also exceeded the regulatory limit at 1.71 mg/L.

41. Georgia Gulf has therefore violated RCRA Sections 3005(a) and (e), 42 U.S.C. §§ 6925(a) and (e), 40 C.F.R. Part 270 and HW-1, Part 270 by treating, disposing, and/or storing hazardous waste in Pond 1 and/or Pond 3.

Storage of Hazardous Waste Without a Permit/Open Container in Lab

42. On one or more occasions in the five (5)-year period immediately preceding the filing of this Complaint, Georgia Gulf failed to comply with 40 C.F.R. § 262.34 and HW-1, Part 262 requiring that a facility properly label storage containers with the words "Hazardous Waste" or with words to identify the contents of the container and keep the container closed in the Satellite Accumulation Area. At the time of the Inspection, an open two-liter bottle, which contained waste acetone (U002), and the container holding the phthalic anhydride (U190) were not labeled with the words "hazardous waste" or with words to identify the contents of the container.

43. Acetone (U002) and phthalic anhydride (U190) are listed hazardous wastes under RCRA. 40 C.F.R. § 261.33(f).

44. Georgia Gulf was therefore in violation of Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), 40 C.F.R. §§ 270.1(c) and 270.71(a) and HW-1, Part 262 with respect to labeling containers.

45. As provided in Section 3008 of RCRA, 42 U.S.C. § 6928, Georgia Gulf's failure to make hazardous waste determinations, storage of hazardous waste without a permit, and failure to maintain a facility to prevent a release, in violation of Section 3005(a) and (e), of RCRA, 42 U.S.C. § 6925(a) and (e), as set forth above, as adjusted by 40 C.F.R. § 19.4, subjects Defendant to the imposition of injunctive relief and civil penalties not to exceed $32,500 per day per violation.

STATUTORY BACKGROUND (CLEAN AIR ACT)

46. Section 112 of the CAA, 42 U.S.C. § 7412, requires EPA to promulgate emission standards for certain categories of sources of hazardous air pollutants known as National Emission Standards for Hazardous Air Pollutants ("NESHAPs").

47. Section 112(b) of the CAA, 42 U.S.C. § 7412(b), designates vinyl chloride as a hazardous air pollutant.

48. Pursuant to Section 112(d) of the CAA, 42 U.S.C. § 7412(d), EPA promulgated the Vinyl Chloride NESHAP, 40 C.F.R. Part 61, Subpart F, establishing emissions standards for vinyl chloride.

49. 40 C.F.R. § 61.67(g)(2) specifies that test Method 107 or Method 106 is to be used to determine the concentration of vinyl chloride in each inprocess wastewater stream for which an emission limit is established.

50. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including "major sources." The purpose of Title V is to ensure that all "applicable requirements" for compliance with the CAA are collected in one place. MDEQ's Title V operating permit program was granted final approval by EPA on January 27, 1995. Pursuant to Miss. Code Ann. § 49-14-30(2), the MCEQ was given statutory authority to adopt regulations to develop and administer Mississippi's Title V program. MCEQ exercised this authority by adopting Air Emissions Operating Permit Regulations for the Purpose of Title V of the Federal Clean Air Act, APC-S-6 (hereinafter "APC-S-6").

51. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and the MDEQ's Title V operating permit program APC-S-6 (and all relevant prior versions of this regulation) have at all relevant times made it unlawful for any person to violate any requirement of a permit issued under Title V or to operate a major source except in compliance with a permit issued by a permitting authority under Title V. Section 504(a) of the CAA, 42 U.S.C. § 7661c(a), implementing regulations of the CAA, 40 C.F.R. § 70.2, and the MDEQ's Title V operating permit program regulations APC-S-6, Section III.C.5 (and all relevant prior versions of these regulations) have at all relevant times required that each Title V permit include, among other things, the requirement to accurately report compliance status in

annual compliance certifications and such other conditions as are necessary to assure compliance with applicable requirements of the CAA.

52. Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), authorizes EPA to bring a civil action if the Administrator finds that any person is in violation of, *inter alia*, any regulation promulgated or permit issued under Section 112 of the CAA, 42 U.S.C. § 7412. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), as adjusted by 40 C.F.R. § 19.4, authorizes the Court to enjoin a violation, to require compliance, and to assess a civil penalty not to exceed $32,5000 per day per violation.

GENERAL ALLEGATIONS -- CLEAN AIR ACT

53. Pursuant to Title V of the CAA, 42 U.S.C. §§ 7661 through 7661f, MDEQ has issued air pollution control permit No. 1840-00014 ("Title V Permit") to the Aberdeen Facility. The Title V Permit, which was issued on January 28, 1998, incorporates as Federally enforceable requirements, *inter alia,* requirements similar and additional to those in the Vinyl Chloride NESHAP.

54. The Title V Permit expired on January 1, 2003. Georgia Gulf filed a timely application for renewal dated September 2003. Based upon Georgia Gulf's timely application for renewal, the Title V Permit remains in force.

55. Georgia Gulf is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

56. At all times relevant to this action, Georgia Gulf has been and continues to be the owner and/or operator of the Aberdeen Facility within the meaning of Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9) and 40 C.F.R. § 112.26. The Aberdeen Facility is a "vinyl chloride plant" within the meaning of 40 C.F.R. § 61.61(b) and it produces vinyl chloride within the meaning of 40 C.F.R. § 61.60.

57. Georgia Gulf, at all times relevant hereto, has operated, and continues to operate, at the Aberdeen Facility several "stationary sources" of air emissions, that are subject to one or more NESHAPs found at 42 C.F.R. Part 61.

58. The Vinyl Chloride NESHAP applies to the Aberdeen Facility, where vinyl chloride is stored, used, processed and released. *See* 40 C.F.R. §§ 61.60 and 61.61(b).

59. On or about September 11, 2000, EPA approved a variance ("2000 Variance") concerning the use of alternative procedures to conduct EPA Method 107 performance testing as required by 40 C.F.R. § 61.70. The 2000 Variance allowed Defendant to eliminate an otherwise required determination of a paired percent total solids value for each resin slurry sample and replace the value with a documented mean value derived by a specified sample preparation technique. The

2000 Variance provided, *inter alia*, that Georgia Gulf would need to determine a new mean value whenever "one calendar year has elapsed since the last documentation determination of the mean percent total solids value."

COUNT II - CLEAN AIR ACT

60. Paragraphs 1 through 15 and 46 through 59 are incorporated herein by reference.

61. Defendant Georgia Gulf has committed the following violations of the CAA and the regulations and permits enforced thereunder:

62. On one or more occasions in the five (5)-year period immediately preceding filing of this Complaint, Georgia Gulf failed to properly calculate the twenty-four (24) average RVCM concentration for internally stripped resin to verify compliance with 40 C.F.R. § 61.64(f)(1)(ii) or 40 C.F.R. § 61.64(e)(1)(ii) and use either the equation required by 40 C.F.R. § 61.70(c)(2)(v) or 40 C.F.R. § 61.70(c)(4)(iv) as applicable.

63. On one or more occasions in the five (5)-year period immediately preceding filing of this Complaint, Georgia Gulf failed to report properly its calculations for percent solids contained in resin samples, as required by the procedures identified in the 2000 Variance for calculating percent solids, in that Georgia Gulf did not

calculate the percent solids at least annually, in violation of Section 113 of the CAA, 42 U.S.C. § 7413, 40 C.F.R. §§ 61.67(g), (g)(1), and 61.70.

64. On one or more occasions in the five (5)-year period immediately preceding filing of this Complaint, Georgia Gulf failed to use valid, unexpired calibration gases for analysis pursuant to Method 107, in violation of 40 C.F.R. Part 61, Appendix B (Method 107 test method).

65. On one or more occasions in the five (5)-year period immediately preceding filing of this Complaint, Georgia Gulf failed to fully implement and maintain the ambient vinyl chloride monitoring program approved by EPA pursuant to 40 C.F.R. § 61.65(b)(8)(i) for the Aberdeen Facility, by not having a monitor in the correct place, in violation of 40 C.F.R. §§ 61.65(b)(8) and 61.242-7(g) and (h), and not maintaining a complete list of valves and their designations. 40 C.F.R. § 61.246(f)(1).

66. On one or more occasions in the five (5)-year period immediately preceding the filing of this Complaint, Georgia Gulf failed to maintain weekly pump inspection reports in violation of 40 C.F.R. § 70.6(a)(3)(ii)(B).

67. On one or more occasions in the five (5)-year period immediately preceding filing of this Complaint, Georgia Gulf failed to include all required components in VOC service in its LDAR program, specifically components related to Alpha

Methyl Styrene, in violation of 40 C.F.R. § 61.65(b)(8) and 40 C.F.R. Part 61, Subpart V. 40 C.F.R. § 61.241.

68. On one or more occasions in the five (5)-year period immediately preceding filing of this Complaint, Georgia Gulf failed to repair leaking pumps PP-513 and PP-889 within fifteen (15) days, in violation of 40 C.F.R. §§ 61.65(g)(2) and 242-7(d), and 40 C.F.R. Part 61, Subpart V.

69. On one or more occasions in the five (5)-year period immediately preceding the filing of this Complaint, Georgia Gulf violated 40 C.F.R. § 61.65(b)(8)(ii) by failing to implement a routine leak detection program at each of its process units at the Aberdeen Facility. Subject to the reasonable opportunity for further investigation and discovery, Georgia Gulf has three process units at its Aberdeen Facility within the meaning of 40 C.F.R. § 61.65(b)(8)(ii).

70. On one or more occasions in the five (5)-year period immediately preceding the filing of this Complaint, Georgia Gulf failed to use Method 107 to verify that the RVCM concentration in the effluent from the internally stripped reactor water and the batch water stripper was below ten (10) parts per million ("ppm") prior to being exposed to the atmosphere, in violation of 40 C.F.R. §§ 61.65(b)(9)(i) and 61.67(g)(2).

71. On one or more occasions in the five (5)-year period immediately preceding the filing of this Compliant, Georgia Gulf failed to accurately report its compliance status, in violation of Section 114(a)(3) of the CAA, 42 U.S.C. § 7414(a)(3), 40 C.F.R. § 61.70.

72. Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), authorizes EPA to bring a civil action if the Administrator finds that any person is in violation of, *inter alia*, any regulation promulgated under Section 112 of the CAA, 42 U.S.C. § 7412. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), as adjusted by 40 C.F.R. § 19.4, authorizes the Court to enjoin a violation, to require compliance, and to assess a civil penalty for each violation not to exceed $32,500 per day per violation.

STATUTORY BACKGROUND -- EPCRA REPORTING REQUIREMENTS

73. EPCRA was enacted on October 17, 1986 as Title III of the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 (1986) (codified at 42 U.S.C. §§ 11002-11050).

74. The purpose of EPCRA is to provide communities with information on potential chemical hazards within their boundaries and to foster state and local emergency planning efforts to control any accidental releases. Emergency

Planning and Community Right-to-Know Programs, Interim Final Rule, 51 Fed. Reg. 41,570 (1986).

75. To achieve this end, EPCRA imposes a system and mandates notification requirements on industrial and commercial facilities and mandates that state emergency response commissions ("SERCs") and local emergency planning committees ("LEPCs") be created. EPCRA establishes a framework of state, regional, and local agencies designed to inform the public about the presence of hazardous and toxic chemicals, and to provide for emergency response in the event of a health-threatening release. The LEPCs are charged with developing emergency response plans based on the information provided by facilities. Sections 301-303 of EPCRA, 42 U.S.C. §§ 11001-11003.

76. Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), requires the Administrator of EPA to publish a list of Extremely Hazardous Substances ("EHSs") which, when released into the environment, may present a substantial danger to public health or welfare or the environment, and to promulgate regulations establishing that quantity of any EHS, the release of which shall be required to be reported under Sections 304(b) and 304(c) of EPCRA, 42 U.S.C. §§ 11004(b) and (c) ("Reportable Quantity" or "RQ"). The list of RQs of hazardous substances is

codified at 40 C.F.R. Part 302, and the list of RQs for extremely hazardous substances is codified at 40 C.F.R. Part 355, Appendices A and B.

77. Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3 define "facility" to mean, in relevant part, all buildings, equipment, structures and other stationary items that are located on a single site and that are owned or operated by the same person.

GENERAL ALLEGATIONS – EPCRA

78. Georgia Gulf is a "person" within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

79. The Aberdeen Facility is a "facility" within the meaning of Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and a "covered facility" within the meaning of 40 C.F.R. § 372.22.

80. Under Section 313 of EPCRA, 42 U.S.C. § 11023, and regulations promulgated thereunder, Georgia Gulf is required annually to calculate and report to EPA various data regarding toxic chemicals at the facility during the preceding year. Such data must include the "annual quantity of the toxic chemical entering each environmental medium."

81. Under Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.20, as an owner or operator of a facility that is required to prepare or have available a

material safety data sheet ("MSDS") under the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, Georgia Gulf is subject to Tier II reporting requirements.

82. Section 304(a) of EPCRA, 42 U.S.C. §11004(a), and the regulations found at 40 C.F.R. § 355.40 require the owner or operator of a facility at which hazardous chemicals are produced, used or stored, immediately to notify the SERC and LEPC when there has been a release of a CERCLA hazardous substance or EHS in an amount equal to or greater than the RQ.

COUNT III – EPCRA

83. Paragraphs 1 through 15 and 73 through 82 are incorporated herein by reference.

84. The chemical substances vinyl chloride, phthalic anhydride, dioxin, dioxin-like compounds, and methanol are "toxic chemicals" as defined by 40 C.F.R. § 372.3 and are listed in 40 C.F.R. § 372.65.

85. The Aberdeen Facility is a "facility" within the meaning of Section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and 40 C.F.R. §§ 355.20 and 372.3, and a "covered facility" within the meaning of 40 C.F.R. § 372.22.

86. The threshold quantity for the toxic chemical dioxin, which is manufactured and/or processed at a facility, is 0.1 grams for the 2001 and 2002 calendar years as

set forth in Section 313(f)(1)(B)(iii) of EPCRA, 42 U.S.C. § 11023(f)(1)(B)(iii), and 40 C.F.R. §§ 372.25 and 372.28(a)(2).

EPCRA Section 313

87. Georgia Gulf failed to submit a toxic chemical release form (Form R) for dioxin and dioxin-like compounds for the calendar years 2001 and 2002 to EPA.

88. Dioxin and dioxin-like compounds are "toxic chemicals" as defined by 40 C.F.R. § 372.3 and are listed in 40 C.F.R. § 372.65.

89. The Aberdeen Facility manufactured and/or processed more than 0.1 grams of dioxin and dioxin-like compounds during the calendar years 2001 and 2002.

90. Georgia Gulf failed to submit a Form R reporting the amount of dioxin and dioxin-like compounds the Aberdeen Facility manufactured, processed, or otherwise used during the 2001 and 2002 reporting years, which is a violation of Section 313 of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. § 372.85(b).

91. Georgia Gulf also failed to identify all required categories of chemical use, specifically phthalic anhydride, which resulted in on-site transfer errors for phthalic anhydride in the 2001 and 2002 reporting year Form R reports.

92. The threshold quantity for a toxic chemical which is used at a facility is 10,000 pounds for the 2001 and 2002 calendar years as set forth in Section 313(f)(1)(A) of EPCRA, 42 U.S.C. § 11023(f)(1)(A), and 40 C.F.R. § 372.25.

93. Because Georgia Gulf used more than 10,000 pounds of phthalic anhydride during the 2001 and 2002 calendar years, Defendant was required to identify phthalic anhydride as a category of chemical use on its Form R for the 2001 and 2002 reporting years.

94. The Aberdeen Facility processed more than 25,000 pounds of phthalic anhydride during the 2001 and 2002 reporting years.

95. Georgia Gulf failed to identify off-site transfers of 13,219 pounds of phthalic anhydride on Form R for the reporting year 2002 and 1,775 pounds on Form R for the reporting year 2002, which is a violation of Section 313 of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. § 372.85.

96. Georgia Gulf failed to identify all required categories of toxic chemical use in its Form R for the 2002 reporting year pursuant to Section 113 of EPCRA, 42 U.S.C. § 11023.

97. The threshold quantity for a toxic chemical which is used at a facility is 10,000 pounds for the 2001 and 2002 calendar years as set forth in Section 313(f)(1)(A) of EPCRA, 42 U.S.C. § 11023(f)(1)(A), and 40 C.F.R. § 372.25.

98. Georgia Gulf used more than 10,000 pounds of methanol during the 2001 reporting year.

99. Methanol is a toxic chemical within the meaning of 40 C.F.R. § 372.3 and is listed in 40 C.F.R. § 372.65.

100. Because Georgia Gulf used more than 10,000 pounds of methanol during the 2001 reporting year, Defendant was required to identify methanol as a category of chemical use on its Form R for the 2002 reporting year, but failed to do so.

101. Under Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), as adjusted by 40 C.F.R. § 19.4, the United States seeks a penalty not to exceed $27,500 per day for each violation of Section 113 of EPCRA, 42 U.S.C. § 11023.

EPCRA Section 312

102. As an owner or operator of a facility that is required to prepare or have available an MSDS under the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, Georgia Gulf is subject to Tier II reporting requirements pursuant to Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.20 *et seq.*

103. Antimony Oxide, TMS Hach Chloride 2 Indicator and a chemical identified by Georgia Gulf as "Proprietary" are toxic chemicals required to be reported on the Tier II form, with a threshold reporting amount of 10,000 pounds.

104. Georgia Gulf did not report Antimony Oxide TMS, Hach Chloride 2 Indicator and a chemical identified by Georgia Gulf as "Proprietary" on the Tier II

form it submitted to EPA for 2003 reporting year, although the Aberdeen Facility stored more than 10,000 lbs of each of these chemicals at the Aberdeen Facility during that year, which is a violation of Section 312 of EPCRA, 42 U.S.C. § 11022 and 40 C.F.R. § 370.20(d).

105. Under Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), as adjusted by 40 C.F.R. § 19.4, the United States seeks a penalty of not more than $27,500 per day for each violation of Section 312 of EPCRA, 42 U.S.C. § 11023.

EPCRA 304

106. The Aberdeen Facility is a "facility," as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

107. Defendant is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

108. Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), and the regulations found at 40 C.F.R. § 355.40, require the owner or operator of a facility at which hazardous chemicals are produced, used or stored, to immediately notify the SERC when there has been a release of a CERCLA hazardous substance or EHS in an amount equal to or greater than the RQ.

109. Vinyl Chloride is a hazardous substance as that term is defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with an RQ of one (1) pound, as

specified in 40 C.F.R. § 302.4. Subject to the reasonable opportunity for further investigation and discovery, Defendant had knowledge within the meaning of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), of the release of vinyl chloride on January 20, 2003 at or about 11:25 a.m.

110. Subject to the reasonable opportunity for further investigation and discovery, Defendant notified the Mississippi Emergency Management Authority ("MEMA") of the release at or about 12:35 p.m. MEMA is the SERC for the State of Mississippi.

111. Defendant's failure to immediately notify MEMA of the January 20, 2003 release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), and is, therefore, subject to the assessment of penalties under Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3), not to exceed $27,500 per day per the first violation of Section 113 of EPCRA, 42 U.S.C. § 11023, and not to exceed $82,500 per day per each subsequent violation of Section 113 of EPCRA, 42 U.S.C. § 11023.

STATUTORY BACKGROUND – CERCLA SECTION 103 REPORTING REQUIREMENTS

112. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances which when released into the environment may present substantial

danger to public health or welfare or the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) ("RQ").

113. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility, as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in quantities equal to, or greater than the RQ to immediately notify the National Response Center ("NRC") established under the Section 311(d)(2)(E) of the CWA, 33 U.S.C. § 1321(d)(2)(E), of such release.

COUNT IV – CERCLA SECTION 103

114. The allegations of Paragraphs 1 through 15 and 111 through 113 above, are realleged and fully incorporated herein by reference.

115. The Aberdeen Facility is a "facility," as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and 40 C.F.R. § 302.3.

116. Defendant is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and 40 C.F.R. § 302.3.

117. Vinyl chloride is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and 40 C.F.R. Part 302, with an RQ of one (1) pound, as listed in 40 C.F.R. Part 302, Table 302.4.

118. The January 20, 2003 release of vinyl chloride from the Aberdeen Facility constitutes a release of a hazardous substance in a quantity equal to, or greater than, the RQ for that hazardous substance.

119. The January 20, 2003 release was not a "federally permitted release" as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. Part 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

120. Subject to the reasonable opportunity for further investigation and discovery, Defendant had knowledge within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), of the release on January 20, 2003 at or about 11:25 a.m.

121. Defendant notified the NRC of the release at approximately 12:26 p.m.

122. Defendant's failure to immediately notify the NRC of the January 20, 2003 release is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603, and is, therefore, subject to the assessment of penalties under Section 109(c) of CERCLA, 42 U.S.C. § 9609(c).

123. Under Section 109(c) of CERCLA, 42 U.S.C. § 9609(c), as adjusted by 40 C.F.R. § 19.4, the United States seeks a penalty of not more than $27,500 per day.

STATUTORY BACKGROUND – CLEAN WATER ACT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (DISCHARGES TO WATERS OF THE UNITED STATES)

124. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6), from a point source into the waters of the United States by any person except in accordance with certain Sections of the CWA, or in compliance with, *inter alia*, a National Pollutant Discharge Elimination ("NPDES") permit issued by EPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. § 1342(b).

125. Under Section 402(a) of the CWA, 33 U.S.C. § 1342(a), the Administrator of EPA may issue a NPDES permit that authorizes the discharge of pollutants, including storm water, into waters of the United States, subject to the conditions and limitations set forth in such permits, including limitations, but only upon compliance with applicable requirements of Section 301 of the CWA, 33 U.S.C. § 1311, or under such other conditions as the Administrator believes are necessary to carry out the provisions of the CWA. On May 1, 1974, EPA granted the State

of Mississippi, through the MDEQ, approval to issue NPDES permits pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b).

126. On February 26, 2002, MDEQ issued to Georgia Gulf a Storm Water Baseline General Permit to Discharge Storm Water in Accordance With the National Pollution Discharge Elimination System, No. MSR0015464 ("Storm Water Permit"), pursuant to MDEQ's federally-approved NPDES storm water regulatory program, Wastewater Regulations for National Pollutant Discharge Elimination System Permits, Underground Injection Control Permits, State Permits, Water Quality Based Effluent Limitations and Water Quality Certification, WPC-1, adopted and promulgated pursuant to authority conferred in Miss. Code Ann. § 49-17-17(i) (Rev. 2006), and under the authority granted pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b). The Storm Water Permit expired on September 11, 2005. Georgia Gulf filed a timely application for renewal dated November 2005. Based upon Georgia Gulf's timely application for renewal, the Storm Water Permit remains in force.

127. Part III.C. of the Storm Water Permit requires the Defendant to develop a Storm Water Pollution Prevention Plan ("SWPPP") and maintain the SWPPP. In accordance with the Storm Water Permit, the SWPPP is required to be developed in accordance with sound engineering practices and identify potential sources of

pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. Identified personnel are required, *inter alia*, to inspect facility equipment and material handling areas for evidence of pollutants entering the drainage system, verify the description of potential pollutant sources, and implement management controls, and other activities, to ensure that storm water discharges are free of debris, floating materials other than trace amounts, eroded soils and the material that will settle in the receiving waters, suspended solids, and substances that would cause a violation of the State Water Quality Criteria, Miss. Code Ann. § 49-17-19, into the receiving waters.

128. The storm water from the Aberdeen Facility drains into an unnamed tributary to James Creek, which drains into James Creek and subsequently into the Tombigbee River and ultimately the Gulf of Mexico, and is, consequently, a "navigable water[]" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

GENERAL ALLEGATIONS CWA – STORM WATER PERMIT

129. Georgia Gulf is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

130. On January 17, 2002, Georgia Gulf submitted to MDEQ a Baseline Notice of Intent ("BNOI") to discharge storm water from the Aberdeen Facility into an unnamed tributary of James Creek. The BNOI included only two discharge points – Outfall 002 and Outfall 003. Georgia Gulf has not submitted a BNOI to discharge storm water from any other points to MDEQ.

131. During the Inspection, EPA inspectors observed the following un-permitted discharge points: (1) pipe discharging to tributary of James Creek beyond west fence line of property; (2) uncontrolled pipes draining from process area; (3) uncontrolled pipe draining from pressurization supply air stack process area; and (4) drainage ditch from "lay down" yard (respectively, Un-permitted Outfall #1, Un-permitted Outfall #2, Un-permitted Outfall #3, and Un-permitted Outfall #4). Defendant failed to comply with Part II.A.1 and C of the Storm Water Permit by failing to submit a BNOI form for Un-permitted Outfalls #1, #2, #3, and #4 and Georgia Gulf was therefore in violation of Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p).

132. Defendant failed to comply with Part III.C of the Storm Water Permit by failing to develop an adequate SWPPP, in that Georgia Gulf's SWPPP did not include all of the required provisions under the Storm Water Permit. Specifically,

as per the Inspection, Georgia Gulf failed to comply with the following permit conditions:

a. The SWPPP did not include a site map showing the drainage areas of each storm water outfall identified by number, each existing structural pollutant control measure and the surface water bodies as required by Part III.C.7.a(4) of the Storm Water Permit; and

b. The SWPPP failed to assess the pollution potential of various sources at the Aberdeen Facility, including at least the rail yard areas one hundred (100) feet downstream of the visual inspection point for Outfall 001, and loading and unloading operations, as required by Part III.C.7b.(2) of the Storm Water Permit.

133. Georgia Gulf's inadequate SWPPP as detailed in Paragraph 132 above was in violation of the Storm Water Permit, and therefore violates Sections 301, 308, and 402 of the CWA, 33 U.S.C. §§ 1311, 1318, and 1342.

134. Pursuant to the Storm Water Permit, Georgia Gulf was required to submit inspection and any sampling results annually postmarked no later the 28th of January. Georgia Gulf submitted its 2003 inspection report late, on or about February 23, 2004, in violation of the Storm Water Permit and therefore in

violation of Sections 301, 308, and 402 of the CWA, 33 U.S.C. §§ 1311, 1318, and 1342.

135. Part IV.A.1 of the Storm Water Permit provides that storm water shall be free from debris, oil, scum, and other floating materials other than in trace amounts.

136. During the Inspection, EPA inspectors identified debris, specifically a gear oil container and an automobile bumper, located approximately seventy-five (75) feet downstream of Georgia Gulf's inspection point for Outfall 002. EPA inspectors further identified a pile of PVC resin materials near railroad cars located approximately a quarter mile downstream of Outfall 003. Both the debris and the PVC resin materials downstream of the Outfall 002 and 003, respectively, were in violation of Part IV.A.1 of the Storm Water Permit and therefore in violation of Sections 301, 308, and 402 of the CWA, 33 U.S.C. §§ 1311, 1318, and 1342.

137. Part III.C.7.b(8) of the Storm Water Permit requires the owner/operator to certify that storm water discharges have been tested for the presence of non-storm water discharges. The certification shall include test method(s), date(s), observation point(s), and result(s). Part V(E) of the Storm Water Permit requires that certifications be signed by a duly authorized representative. The certification

submitted by Georgia Gulf failed to meet the requirements of Part III.C.7.b(8) in that it did not include test methods, results, and certification statement, and/or was not signed by a responsible official as required, and therefore was a violation of Sections 301, 308, and 402 of the CWA, 33 U.S.C. §§ 1311, 1318, and 1342.

138. Part III.C.7.b(7) of the Storm Water Permit requires the SWPPP to specify periodic training for personnel that are responsible for implementing and/or complying with the requirements of the SWPPP, and the training shall, at a minimum, include the plans, goals and other components identified in Part III.C.7.b. The SWPPP did not identify the following required training components: Storm Water Management Controls, Pollution Prevention Manager/Committee, Risk Identification and Assessment, Sediment and Erosion Prevention, Preventative Maintenance, Employee Training, and Illicit Connections – Testing and Certification, in violation of Part III.C.7.b of the Storm Water Permit and therefore in violation of Sections 301, 308, and 402 of the CWA, 33 U.S.C. §§ 1311, 1318, and 1342.

139. Under Section 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d), as adjusted by 40 C.F.R. § 19.4, any person who fails, among other things, to comply with Sections 301, 308, and 402 of the CWA, 33 U.S.C. §§ 1311, 1318, and 1342, shall be liable for civil penalties for those violations and may be subject to an

injunction with respect to those violations and civil penalties not to exceed $32,500 per day per violation.

Oil Spill Prevention Program

140. In 1972, Congress enacted the CWA, 33 U.S.C. § 1251 *et seq.* In Section 311(j)(1)(C) of the CWA, 33 U.S.C § 1321(j)(1)(C), Congress required the President to promulgate regulations that would establish procedures for preventing and containing discharges of oil from onshore facilities into navigable waters.

141. The authority conferred by Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), was delegated to the Administrator of EPA. In 1973, the Administrator promulgated the Oil Pollution Prevention Regulations, which are published at 40 C.F.R. Part 112.

142. The Oil Pollution Prevention Regulations apply to owners and operators of non-transportation-related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil and oil products, which, due to their location, could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines. 40 C.F.R. Part 112.

143. For purposes of Sections 311(b)(3) and 311(j)(1)(C) of the CWA, 33 U.S.C. §§ 1321(b)(3) and (j)(1)(C), EPA promulgated a regulation, set forth at 40 C.F.R.

§ 110.3, specifying what quantities of oil may be harmful to the public health or welfare or the environment. Such quantities of oil include discharges that either: (a) violate applicable water quality standards, (b) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or (c) cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines. 40 C.F.R. § 110.3.

144. 40 C.F.R. Part 112 requires regulated facilities to prepare and implement SPCC ("Spill Prevention Control and Countermeasure") Plans, to prevent discharges of oil in harmful quantities into navigable waters.

145. Pursuant to 40 C.F.R. § 112.3(a), owners and operators of onshore and offshore facilities in operation before January 10, 1974, the effective date of the Oil Pollution Prevention Regulations, had to prepare written SPCC Plans, in accordance with 40 C.F.R. § 112.7, within six months of the effective date of the regulations, *i.e.*, by July 10, 1974, and implement those Plans within one year of the effective date of the regulations, *i.e.*, by January 10, 1975. 40 C.F.R. § 112.3.

146. Owners or operators of facilities that are required to prepare an SPCC Plan shall complete a review and evaluation of the SPCC Plan and its implementation at least once every three years from the date the facility becomes subject to 40 C.F.R. Part 112; 40 C.F.R. § 112.5(b).

COUNT V – CWA
FAILURE TO COMPLY WITH OIL POLLUTION PREVENTION REGULATIONS

147. Paragraphs 1 through 15 and 124 through 146 are incorporated herein by reference.

148. At all relevant times, Georgia Gulf owned and operated the Aberdeen Facility.

149. Georgia Gulf is engaged in producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products at the Aberdeen Facility, as defined in Section 311(a)(1) of the CWA, 33 U.S.C. § 13121(a)(1), and 40 C.F.R. §§ 112.1 and 112.2.

150. The Aberdeen Facility is an "onshore facility" within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

151. The Facility is a "non-transportation-related" facility under the definition set forth in the "Memorandum of Understanding Between the Secretary of Transportation and the Administrator of the Environmental Protection Agency," 36 Fed. Reg. 24,080 (Dec. 18, 1971), incorporated by reference by 40 C.F.R. § 112.2, and set forth in 40 C.F.R. Part 112, Appendix A.

152. The Aberdeen Facility has the capacity to store approximately one million gallons of petroleum products in aboveground storage tanks.

153. An unnamed tributary of James Creek, which feeds into James Creek, originates on the Facility property.

154. The storm water from the Aberdeen Facility drains into an unnamed tributary to James Creek, which drains into James Creek and subsequently into the Tombigbee River and ultimately the Gulf of Mexico, and is, consequently, a "navigable water[]" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

155. Due to its location, in the event of a discharge of oil, the Aberdeen Facility could reasonably be expected to discharge oil in harmful quantities, as defined by 40 C.F.R. Part 110, into or on a navigable water of the United States or its adjoining shorelines.

156. As per the Inspection, EPA ascertained that Georgia Gulf had failed to (1) prepare an adequate SPCC Plan, and (2) completely and adequately implement certain required spill prevention measures in accordance with 40 C.F.R. §§ 112.3 and 112.7.

157. Georgia Gulf failed to comply with the requirements of the CWA and the Oil Pollution Prevention Regulations promulgated thereunder, by failing to

prepare and implement an SPCC Plan in accordance with good engineering practices, and failing to implement certain required spill prevention measures, in violation of 40 C.F.R. §§ 112.3 and 112.7 as follows:

a. failed to identify the location and capacity of all oil storage, as required by 40 C.F.R. § 112.7(a)(3)(i);

b. failed to identify discharge prevention measures including procedures for routine handling of products, as required by 40 C.F.R. § 112.7(a)(3)(i);

c. failed to identify discharge or drainage controls, and procedures for the control of a discharge, as required by 40 C.F.R. § 112.7(a)(3)(iii);

d. failed to identify countermeasures for discharge discovery, response and cleanup, as required by 40 C.F.R. § 112.7(a)(3)(iv);

e. failed to identify the methods of disposal of recovered materials, as required by 40 C.F.R. § 112.7(a)(3)(v);

f. failed to identify procedures to be used when a discharge occurs that requires additional resources and materials, as required by 40 C.F.R. § 112.7(a)(5);

g. failed to identify loading and unloading operations that are applicable to the SPCC Plan, as required by 40 C.F.R. § 112.7(h);

h. failed to provide a written commitment of manpower, equipment and materials, as required by 40 C.F.R. § 112.7(d)(2);

i. failed to provide inspection procedures and maintain records of inspections and disposal from each unit, as required by 40 C.F.R. § 112.7(e);

j. failed to identify employees who were designated to handle oil products and have documentation of the specific training that was provided to each of these employees, as required by 40 C.F.R. § 112.7(f);

k. failed to include security operations and plans for each storage unit and each control device, as required by 40 C.F.R. § 112.7(g);

l. failed to identify three storage units in the SPCC Plan, specifically the Mineral Oil Tank, Tank in Fire Training, and Waste Oil Tank in the Maintenance Area, as required by 40 C.F.R. § 112.7(a)(3); and

m. failed to assess the requirements for developing a Facility Response Plan, as required by 40 C.F.R. § 112.20.

158. Georgia Gulf submitted to EPA an amended SPCC Plan on or about October 18, 2004, following the Inspection. While the amended SPCC Plan added a mineral oil tank not included on the earlier SPCC Plan, it failed to correct various inadequacies contained in the SPCC Plan.

159. By its failure to properly prepare and implement an SPCC Plan, Georgia Gulf violated the regulations at 40 C.F.R. Part 112, issued under CWA Section 311(j), 33 U.S.C. § 1321(j), which sets forth the requirements for preparation and implementation of SPCC Plans.

160. Accordingly, pursuant to Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), as adjusted by 40 C.F.R. § 19.4, Georgia Gulf is liable for injunctive relief and a civil penalty of not to exceed $32,500 per day per violation.

INJUNCTIVE RELIEF

161. Unless restrained by order of this Court, one or more of the violations described above are likely to continue or recur.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the United States of America and MCEQ, respectfully request that this Court grant the following relief:

1. Permanently enjoin Georgia Gulf from further violations of the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C.

§ 6901 et seq.; the Emergency Planning and Community Right-to-Know Act , 42 U.S.C. § 11001 *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*; and the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, as amended by the Oil Pollution Act of 1990, and their implementing permits and regulations.

2. Order Georgia Gulf promptly to take all steps necessary or appropriate to comply with the foregoing laws, regulations and permits.

3. A judgment assessing civil penalties against Georgia Gulf not to exceed $27,500 per day for each violation that occurred prior to March 15, 2004 and not to exceed $32,500 per day for each violation which occurred on or after March 15, 2004.

4. Award Plaintiff the costs and disbursements in this action.

5. Award such other relief as this Court may deem just and proper.

FOR THE UNITED STATES:

Respectfully Submitted,

RONALD J. TENPAS
Acting Assistant Attorney General
Environmental Enforcement Section
Environment and Natural Resources
Division

CATHERINE BANERJEE ROJKO
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice
District of Columbia Bar No. 415927
Post Office Box 7611, Ben Franklin Station
Washington, D.C. 20044
202.514.5315
202.514.0097 (fax)

DAVID E. NAHMIAS
United States Attorney

DANIEL A. CALDWELL
Assistant United States Attorney
Northern District of Georgia
Georgia Bar No. 102510
600 Richard B. Russell Federal Bldg.
75 Spring Street, S.W.
Atlanta, Georgia 30303
404.581.6224
404.581.6181 (fax)

OF COUNSEL:

TERESA MANN
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

GALE BONANNO
TIMOTHY SULLIVAN
Attorney-Advisors
Office of Civil Enforcement
Mail Code 2248A
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

FOR THE MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY:

LISA THOMPSON OUZTS
Senior Attorney, Mississippi Department of Environmental Quality
P.O. Box 20305
Jackson, MS 39289-1305
601.961.5340
601.961.5349 (fax)